IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

SATURDAY, THE 18TH AUGUST 2007 / 27TH SRAVANA 1929

WP(C).No. 30959 of 2003(I)

PETITIONER:

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1. NAKERI VASUDEVAN NAMBOODIRI,
   NAKERI ILLOM, ROHINI TOURIST HOME, GURUVAYOOR.

2. K.B.SUNILKUMAR,
   KANDAMPULLI HOUSE, KOONAMMOOCHI, PAYOOR,
   THRISSUR DISTRICT.

3. SYAMKUMAR,
   NADUVATH POONKUNNAM, KUTTANKULANGARA.

4. C.L.DANY,
   CHITTLAPPALLI HOUSE, MISSION QUARTERS, THRISSUR-1.

5. K.R.VASUDEVAN NAMBOODIRIPPAD,
   KIRANGHAT MANA, VAZHANI, THRISSUR.

6. P.MADHU,
   PALLIYANA HOUSE, P.O. ANNAKARA, THRISSUR DIST.

7. K.VISWANATHAN,
   BHAVANA, KARUPUTHUR, THRISSUR DIST.

8. DR.R.K.KAIMAL,
   PARAYALIL HOUSE, KEERANKULANGARA, THRISSUR.

9. K.N.VENKITESH,
   25/243, MARAR ROAD, THRISSUR.

10. K.R.ANTONY,
    KUNJARA HOUSE, PERUMBILISSERY P.O.,
    CHERPU, THRISSUR.

11. A.KUMARAN,
    ATHIPURATH HOUSE, PERUMBILLISSERY, CHERPU P.O.

12. K.GOVINDANKUTTY,
    SITA SADAN, PUNKUNNAM, THRISSUR.

13. DR.RAMDAS C.R.,
"GOKUL", CHEMBUKKAVU, THRISSUR-20.

14. K.M.NAIR,
245, HILL GARDEN, KUTTANALLOOR.

15. K.UNNI,
CHENARIKULANGARA, OLLOOKKARA P.O., THRISSUR.

16. BABU JOHN,
MG. PARTNER, ST.ANTONY'S TIMBER DEPOT,
P.O. CHEVOOR.

17. E.T.PARAMESWARAN MOOS,
E.T.MOOSA, THAIKATTUSSERY, OLLUR.

18. SANKARAN C.P.,
CHIROTH HOUSE, P.O. KAIPARAMBA, MUNDOOR, THRISSUR.

19. K.S.ANANDA MANI,
MANGALAM HOUSE, THIRUVAZHIYODE P.O., OTTAPPALAM.

20. C.S.SASIDHARAN,
CHULIPARAMBIL HOUSE, P.O. KUNDALIYUR, THRISSUR.

21. M.P.VARIJAKSHAN,
SAVITHA, P.O. CHANDAMPATTA, PALAKKAD DIST.

22. PATTATH ASHOK KUMAR,
PATTATH HOUSE, P.O. KIZHUPPILLIKKARA, THRISSUR.

23. C.U.BINOY CHNGATH HOUSE,
CHITTANJOOR P.O., KUNNAMKULAM.

24. P.K.RAVINDRAN,
POOZHIKUNNATH HOUSE, ARTHAD P.O., KUNNAMKULAM.

25. DR.T.C.RAVUNNI NAMBIAR,
AMBADY HOUSE, PERINGODE P.O., KOOTTANAD, PALAKKAD.

26. A.P.MOHANDAS,
MOHANALAYAM, P.O. PERINGODE, PALAKKAD.

27. KANIPPAYYOOR VIJAYAN NAMBOODIRIPPAD,
KARUVANTHALA DEVASWOM P.O., ENAMAKKIL,
VENKITANGU, THRISSUR.

28. P.NARAYANAN RAJA,
PUNNATHUR ROHINI, KUMBALANGAD,
KANJIRAKKODE, WADAKKANCHERY.

29. MOHANAN,
CHEMBOOTHRA, KODUNGALLOORKKAVU BHAVATHY TEMPLE,
CHEMBOOTHRA, P.O. PATTIKKAD.

30. A.K.PRAMOD,
SREEVILAS, MELEPATTAM, PALAKKAD DISTRCIT.

31. K.LAKSHMANAN,
KALLAMPURATH, KALUVAZHI, P.O. THIRUAZHIYODE,
PALAKKAD DIST.

32. P.M.NARAYANAN,
POOMILLI MANA, PERUNGODE, PALAKKAD.

33. M.A.PARAMESWARAN,
MANGALAMKUNNU, P.O. KATTUKULAM.

34. B.S.JANATH,
BHASURALAYAM, ERAVAKAD P.O. KUMARANELLUR P.O.,
PALAKKAD.

35. N.KESAVAN NAMBOODIRI,
NAKERI ILLOM, GURUVAYOOR.

BY ADV. SRI.K.RADHAKRISHNAN(SR)
SRI.SAJEEV KUMAR K.GOPAL
SRI.BINOY VASUDEVAN

RESPONDENTS:
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1. UNION OF INDIA,
REPRESENTED BY PRINCIPAL SECRETARY TO GOVERNMENT,
MINISTRY OF FORESTS, NEW DELHI.

2. THE CHIEF SECRETARY TO GOVERNMENT,
STATE OF KERALA, THIRUVANANTHAPURAM.

3. THE CHIEF CONSERVATOR OF FORESTS,
FOREST DEPARTMENT, THIRUVANANTHAPURAM.

BY ADV. SRI.C.B.SREEKUMAR, ADDL.CGSC
ADV. SHRI.RANJIT THAMPAN, GOVERNMENT PLEADER
SRI.A.JAYASANKAR, ADDL.CGSC
ADV. SHRI.P.PARAMESWARAN, ACGSC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ALONG WP(C) NOS. 31503/03, 33554/03, 15986/04, 24966/06, 29760/06, 32021/06 & 2751/07 ON 18/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) No. 30959/2003

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF NOTIFICATION NO. 16/2003 DATED 17TH JANUARY, 2003 PUBLISHING WILD LIFE PROTECTION (AMENDMENT) ACT 2002.

P2 : COPY OF THE PRESS NOTE DATED 17/06/2003 ISSUED BY THE PRINCIPAL CHIEF FOREST CONSERVATOR AND CHIEF WILD LIFE WARDEN, KERALA.

P3 : COPY OF THE APPLICATION FORM UNDER SECTION 40A OF WILD LIFE PROTECTION ACT 1972 FOR CERTIFICATE OF OWNERSHIP.

P4 : COPY OF THE NEWS ITEM APPEARED IN MALAYALA MANORAMA DAILY DATED 28/08/2003.

// TRUE COPY //

PA TO JUDGE.

jg

C.R.

C.N.RAMACHANDRAN NAIR, J.

WP(C) Nos. 30959, 31503, 33554 of 2003, 15986 of 2004 24966, 29760, 32021 of 2006 & 2751 of 2007

Dated, this the 18th day of August, 2007

J U D G M E N T

The petitioners in these writ petitions are either owners of elephants or association of elephant owners. The challenge in these writ petitions filed from 2003 onwards is against Section 43 of the Wild Life Protection Act 1972, whereunder, prohibition is introduced against sale of captive animal including elephants with effect from 01/04/2003. During pendency of these writ petitions, this Court issued interim orders staying the operation of the impugned provision. The Central Government has now filed statement acknowledging the hardship caused to owners of captive elephants on account of the impugned amendment Act 16 of 2003. It is stated by the Government that amendment will be introduced exempting elephants from the operation of the prohibitory clause. In other words, Government has recognized the genuine hardship against the prohibition and the need to permit transfer or sale of elephants by owners of the captive elephants who for many reasons will have to sell or transfer elephants, sometimes even to protect

the animal itself. In view of the statement filed by the Central Government, I do not think this Court should consider the validity of prohibitory clause which in the present form will not be in the statute after the amendment. However, learned special Government Pleader appearing for the Forest Department in Kerala submitted that the Chief Wild Life Warden of the State is of opinion that there is saturation of captive elephant population in the State of Kerala and further import should not be permitted from other States. He also emphasised the requirement to enforce the provisions of the Kerala Captive Elephant (Management and Maintenance) Rules 2003. I do not think the petitioners can oppose the enforcement of regulatory provisions contained in the Captive Elephant Management Rules, which the Chief Wild Life Warden is bound to enforce. In fact, going by the increased number of incidents of violence by and to elephants, there is an urgent need to enforce the Rules and if required to introduce more regulatory provisions to ensure that elephants are not ill-treated and no provocation is caused making captive elephants a threat to human life and property. As an interim measure, i.e. until amendment is made to Section 43 of the Wild Life Protection Act, I feel there should be some regulation with regard to transfer of elephants at least within the State. It is therefore declared that hereafter the

sale, transfer and other dealings involving changing of hands of captive elephants should be only with the approval and in accordance with the norms prescribed by the Chief Wild Life Warden, who will ensure that purchasers have the required facilities to maintain the captive elephants purchased by them. Transfer should be permitted only on condition of purchasers satisfying of the requirement under the Captive Elephant and Management Rules and guidelines issued by the Government or the Chief Wild Life Warden. This arrangement will continue until proposed amendment is made and thereafter the amended provisions will apply. Every applications filed should be disposed of after conducting enquiry within a period of 30 days from receipt of application. State Government should issue instructions to the revenue and police authorities to co-ordinate with the Chief Wild Life Warden and the authorized officials to ensure that the Captive Elephant Management Rules are enforced.

These writ petitions are disposed of as above.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

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